

# Ten Markets or One? Regional Barriers to Economic Activity in Canada

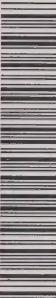
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## TEN MARKETS OR ONE?

regional barriers to economic activity  
in Canada

A.E. Safarian

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Among the popular and representative systems of government, I do not approve the federal system: it is too perfect; and it requires virtues and political talents much superior to our own.

- Simon Bolivar

## INTRODUCTION

For two decades there has been a great deal of pressure for decentralization in the Canadian federation. Seen most dramatically in a push for sovereignty-association by the Parti québécois, it extends far beyond this as almost all provinces reach for more power. There are some good reasons for decentralizing in a number of areas of policy, depending on how governments can best serve the needs of their constituents. There is also understandable resentment towards past federal incursions into provincial areas of jurisdiction. However, decentralizing tendencies have caused problems of their own, fragmenting the Canadian market and weakening the nation's ability to deal consistently with other countries. Individuals, voluntary associations, and governments have found some courses of action foreclosed and the costs of others raised.

This paper considers a few of the many ways in which regulatory and fiscal measures impede the mobility of goods, capital, and labour in the Canadian market. Such measures may of course serve a variety of purposes quite apart from their effects on mobility, and they are obviously at the heart of the division of powers in the Canadian constitution. We shall therefore also look at the complex policy choices Canada faces in dealing with these issues.

## RESTRICTIONS ON THE INTERPROVINCIAL MOBILITY OF GOODS, CAPITAL, AND LABOUR

Many things can affect mobility. Our interest is in government measures that reduce mobility between the provinces and are discriminatory in imposing stiffer requirements on non-residents of a province than on residents. As we shall see, such a broad view leaves much scope for qualification, for borderline cases.

All provinces now exercise government procurement policies designed to give preferential treatment to goods produced within their borders or to

goods with a high provincial content.<sup>1</sup> Sometimes, as in Quebec, these policies reveal three different levels of preference: provincial, Canadian, and foreign; elsewhere they are less clearly defined, as in Ontario, where there is a 10 per cent Canadian preference and a provincial preference is exercised occasionally. Government departments may purchase only from government corporations, where feasible, and the latter in turn may favour provincial sources. Contracts for capital works often follow patterns for current expenditures, extending to regional preferences within provinces in some cases. Local suppliers can be favoured in public procurement even where tenders must be called and other rules followed.<sup>2</sup> Purchases of professional services are also sometimes covered. Governments have occasionally agreed on common preferences for firms within their territory, as did Saskatchewan and Alberta at one point. The question at issue is the existence of specific preference margins or stipulations of local content rather than the common practice of awarding contracts to local sources when price and other conditions are not much different.

Government procurement policies are important even if their strongest effects are confined to certain sectors or industries. More pervasive in impact, however, are attempts to entice or direct the private sector to favour provincial sources of supply, hire residents of the province, or locate or relocate plants. Subsidies under a variety of regional development programs, both federal and provincial, have long been used to attract capital to or prevent labour outflow from various regions or provinces. An example of what provinces can do to capture for themselves the gains from growth is evident in Alberta's regulations on the use of energy in industry, which, except for existing or smaller users, requires an industrial development permit. That permit in turn demands information not

1 Information on these matters is often difficult to unearth, much less quantify. See Albert Breton, Discriminatory Government Policies in Federal Countries, Private Planning Association of Canada, 1967; Klaus Stegemann, Canadian Non-Tariff Barriers to Trade, 1973; and particularly T.L. Powrie, Provincial Economic Policies, a report prepared for the Economic Council of Canada and the Ontario Economic Council by the Private Planning Association of Canada, March 1969. Quebec's policies are described in the Globe and Mail, 3 and 15 February 1977, and a summary by provinces is given in the Financial Times of Canada, 31 January 1977.

2 Stegemann, Canadian Non-Tariff Barriers, 48-9

only on energy use but also on such matters as the sources of various inputs, ownership of the project, and location of senior personnel. Those provisions have certainly not escaped the notice of other provinces, and similar initiatives can be found in other provinces.<sup>3</sup>

The lengths to which interprovincial rivalries can go were shown in the chicken-egg war of the early seventies, which resulted from provincial attempts to raise and stabilize producer income. At issue was a Quebec marketing scheme applying to all eggs in the province, even to those from outside, which tried to maintain prices above those in Ontario. Of course it did not work. Ontario moved in the same direction with its poultry marketing board in response to being undercut by broilers from Quebec. All the provinces were soon in the act, and interprovincial shipments of eggs and poultry were brought almost to a standstill by a variety of barriers. The federal government did not intervene to check this challenge to the national market. Instead, Manitoba, unable to challenge the Quebec law directly, enacted the same law and had it appealed to the Supreme Court of Canada, which ruled decisively against it. The federal government then moved, with provincial co-operation, to establish marketing agencies that limited interprovincial and international competition.

Other industries have similar problems. In the communications industry, for example, overlapping jurisdictions and a struggle for power are creating great complications. Imagine the complexities of dealing in a national market with ninety-two provincial and twenty-three federal laws affecting the storage and transmission of data.<sup>4</sup>

Let me turn briefly to the capital market. In recent months both the Quebec and British Columbia governments have blocked attempts at interprovincial takeovers of companies. Some provincial development corporations require a degree of local ownership as a condition of aid. Many provinces have, or are about to enact, provincial investment plans with provincial ownership or sourcing restrictions as conditions for tax relief.

3 Energy Resources Conservation Board, Alberta, Interim Directive ID - OG 77-1, 'Applications Under the Oil and Gas Conservation Act for Industrial Development Permits'

4 For the chicken-egg war, see A.E. Safarian, Canadian Federalism and Economic Integration, prepared for the Government of Canada, Ottawa, 1974, especially Part III. For the communications industry, see Financial Post, 19 May 1979, F8.

It is not difficult to extend this list: the provincial reinvestment provisions of the Canada and Quebec Pension Plans; the establishment of various types of government investment funds, heritage trusts, and the like with a high degree of local investment as a condition; crown corporations that operate on those principles; a wide variety of area development policies (federal-provincial or provincial) designed precisely to channel capital to certain areas; stock exchange regulations tending to impede capital mobility; and a variety of informal pressures for reinvesting earnings provincially.

Next consider labour mobility. One may of course move anywhere in Canada. But the right to work anywhere in the country is by no means guaranteed. Because of provincial licensing and certification powers, entry into some occupations can pose serious problems.<sup>5</sup> Once licensing or certification is accepted as necessary, usually on the ground of protecting consumers, anyone trained outside the province ought to be required to meet the same standards as those trained within. But defining equivalents in education, experience, and standards for out-of-province applicants is sometimes difficult, especially for certain foreign jurisdictions. Then too, more than consumer protection may be involved. A few years ago the requirements (since changed) for transfers of pharmacists from out-of-province in both Ontario and Quebec clearly went well beyond what was professionally necessary.<sup>6</sup> In professions such as law either much of the work depends on the provincial context or experience in Canadian conditions is necessary for satisfactory performance. But it is not clear, for instance, how familiarity with Ontario law is enhanced by the condition that transfers of lawyers from other provinces to Ontario require, among other things, three years of active practice after the call to the bar. Professional accounting associations appear to have achieved mobility across Canada through a national curriculum and examinations, but this is not true of public accountancy, where, for example, those moving to Ontario

5 A detailed study of four professions across Canada can be found in Ellen B. Murray, Transfer of Professionals from Other Jurisdictions to Ontario, prepared for the Professional Organizations Committee, Ontario, 1978. For the health sciences, see Province of Ontario, Report of the Committee on the Healing Arts, 1970 and various staff studies for the Committee.

6 Safarian, Canadian Federalism, 79 and 85

may have to take additional education.<sup>7</sup> In varying degrees by profession there are requirements for further retraining or examinations, citizenship, special fees, work experience, and so on for transfer applicants, stipulations that often reflect rigid rules, failure to evaluate credentials, or outright protection as much as an attempt to ensure competence. Moreover, mere uniformity of standards among provinces may not suffice, or even be necessary, where differences in provincial experience or systems exist. Indeed, it is often not the absence of uniformity but the failure to develop adequate systems of transfer that creates the problem. Yet some professions have succeeded in developing either uniform standards or transfer provisions that protect standards while not discriminating against transfer applicants.

Certification and licensing provisions for various skilled trades can cause similar problems. However, certification is often voluntary, provisional certificates are frequently available, and there is substantial interprovincial co-operation through the Interprovincial Seal Program, which permits qualified workers in many categories to avoid requalification in other provinces. Nonetheless the Program is voluntary, in the sense that any province can opt out of it, and in practice it appears to have worked very unevenly by province: the large discrepancy between Quebec and Ontario in the seals issued in construction trades, for example, is difficult to understand.<sup>8</sup> Provinces can have different licensing requirements for identical occupations. The mobility problems that this difference could create are suggested by the fact that 31 per cent of craftsmen in production process occupations and 25 per cent of males in sales occupations are subject to licensing in Canada.<sup>9</sup> The kind of difficulty that

7 Murray, Transfer of Professionals, 148-59

8 From the early sixties until 31 March 1976, the number of Interprovincial Seal Certificates issued in the construction trades totalled 8939 in Ontario and 40 in Quebec (Quebec entered the program after 1969). Certification in all the trades involved is compulsory in Quebec but only in five of them in Ontario. The picture appears to have changed significantly in recent years. In 1978, for example, 944 seals were issued to electricians in Ontario and 134 in Quebec, while 320 seals were issued to plumbers in Ontario and 26 in Quebec. The totals for Canada were 3035 and 1281 respectively. Data from the Federal Department of Manpower and Immigration, Interprovincial Standard Examinations.

9 David A. Dodge, 'Occupational wage differentials, occupational licen-

can arise with different provincial approaches has been dramatically demonstrated recently by the problems in the construction industry between Quebec and Ontario.<sup>10</sup>

Limitation of access to public services can also impede mobility. Provincial or municipal income support plans with residence requirements are one example. In post-secondary education a number of professional faculties have put quotas on the enrolment of out-of-province students.<sup>11</sup> The change in 1977 in the system of federal grants for post-secondary education may well lead provinces to encourage the enrolment of their own residents more than those from elsewhere. Previously, when the federal government paid half the operating cost per student, a province had far less interest in the provincial origin of students than today, when the federal grant is based on provincial population. Similar problems can arise because of different regulations for such matters as private pensions. Where these are not easily portable or readily transferred between jobs or provinces, labour may be partially locked in. A period of lack of portability for private pensions may be desirable to protect employer invest-

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sing and returns to investment in education: exploratory analysis,' in Economic Council of Canada, Canadian Higher Education in the '70's, 1972

10 Quebec maintains a distinctive system requiring graded work permits for skilled construction workers, by designated regions, designed to stabilize employment conditions and also to control corrupt practices. It has been alleged by various Ontario interests that the effect of this is to impede (though not to eliminate) the hiring of Ontario workers, notably in Ottawa and Cornwall, when this system is taken in conjunction with compulsory certification of skilled trades (with no allowance for provisional certification) and residence requirements for firms bidding on provincially financed projects. The Ontario side has been criticized too, particularly the effect of hiring hall practices on interprovincial mobility, but the net effect may be to make it harder for Ontario residents to work in Quebec construction than the reverse. Whatever the case, the Ontario government has felt it necessary to retaliate, and no solution has been reached to date. See the Construction Industry Labour Relations Act, Quebec Official Gazette, 26 October 1977, Vol. 109, No. 43, Part 2, 5581-5600; and the Globe and Mail, 23 June 1978, 1.

11 M.J. Trebilcock, G. Kaiser, and J.R.S. Prichard, 'Restrictions on the interprovincial mobility of resources: goods, capital and labour,' 112-14, 120-1, in Ontario Economic Council, Intergovernmental Relations, 1977

ment in training, which could be reduced if vesting of pensions came too early. But it is hard to see why portability should be legally restricted for, say, fifteen years, particularly since pensions can be regarded as simply deferred earnings.<sup>12</sup>

#### BARRIERS TO INTERNATIONAL MOBILITY

Regional barriers affect international trade and migration also. The provinces have undertaken control of liquor - with the agreement of the federal government of the time. Today they control not only the quantities imported but also the relative prices (the markup on scotch whisky can be well above that on Canadian whisky), and they even favour local products in displays. This practice was submitted to GATT as a non-tariff barrier by Canada's trading partners, but the federal government could do little because the provinces control all trade in liquor. This is only one of many examples of the limitations imposed by the constitution on Canada's ability to deal with her economic partners in GATT, OECD, and other bodies. The restrictions on certain non-tariff barriers under the recently concluded Tokyo Round will not apply to provincial and state governments. One result is that a number of industries that sell to government and in which Canada has some proficiency, such as communications, will continue to be seriously constrained by state and provincial procurement policies.

The impediments to labour mobility in Canada fall most heavily on immigrants. If a province does not recognize foreign qualifications, or has a more stringent set of requirements for foreign transfers, the immigrating trained worker has to surmount extra barriers when moving between provinces. Such situations are unavoidable in the absence of uniform standards or reciprocal acknowledgment of standards between provinces because a province otherwise risks having its standards undercut by incoming persons less qualified than those trained there. My comments here are directed at cases where extra qualifications appear to be required of such transfers, or where the failure to develop uniformity or reciprocity

12 This period refers to the minimum period for vesting required in some provincial legislation on private pension plans. Collective agreements often ensure much shorter vesting periods.

imposes extra burdens on those who wish to move interprovincially.<sup>13</sup> Consider foreign transfer applicants entering the legal profession in Ontario. Even those licensed in other common law jurisdictions must secure an approved Canadian law degree. Though some advanced standing can be given, they must at least complete a year of university and take eighteen further months in articling and the bar admission program. Other Canadian provinces are generally less restrictive, although they are not models of what could be done in these respects. In medicine, the inability to agree on how to evaluate the internship experience of immigrant doctors (apart from those from the United States and some Commonwealth countries) has led some provinces to require the repetition of internship even for experienced doctors.

#### THE CANADIAN NATIONAL MARKET AND PROVINCIAL INTEREST

A clear objective of confederation, one to which all the provinces are committed, is the concept of a common market and economic union in goods, labour, and capital.<sup>14</sup> Even the Parti québécois includes in its

13 On provincial participation in immigration from abroad, I would simply quote my earlier position: 'So long as provincial efforts to promote immigration serve largely to provide a queue of potential recruits for the federal immigration authorities, but do not restrict movement of immigrants within Canada, there is no conflict with the concept outlined here' (Safarian, Canadian Federalism, 83).

14 The federal state, of course, has an even higher degree of economic integration. In a free trade area, two or more separate countries maintain separate tariff and other trade barriers with the rest of the world while removing them between themselves. In a customs union they accept a common tariff. In a common market, they go further than trade and permit some mobility of labour and capital between themselves. In an economic union some other aspects of policy, such as those on money or competition, are harmonized to further enhance gain from trade. A federal system in its economic aspects includes all of this and is a large step beyond. Basic economic powers are allocated so as to permit each level of government its own life while engaging enough co-operative mechanisms to permit some or all together to undertake tasks far beyond each alone. (In a unitary state, of course, major economic power rests with the central government.) Thus a federal state is far more than an economic union in its economic aspects, if only because it involves a federal government. Since its powers typically extend across the country and abroad, it necessarily plays a critical role at times in reconciling conflicting regional

goal of sovereignty-association a customs union and some aspects of a common market and an economic union. My view is that the BNA Acts and subsequent court interpretations have failed to spell out the basic requirements of the Canadian national market, that to realize such a concept involves far more policy harmonization than provincial governments now accept, and that provincial regulatory and other policies, and sometimes federal policies as well, have done substantial damage to the present national market, both internally and externally.

Underlying the concept of the national market is a view that there are gains to be made in both production and consumption from the specialization and exchange of goods and services. Some of these gains are static ones such as access to low-cost supplies; others are dynamic gains due to economies of scale in production and the effect of competition on growth processes. Further gains are possible as capital, labour, and techniques move to where they can be more fully or more productively utilized. I speak of economic gains, but many people regard the right to move and to work anywhere in the country as more than an economic one. Moreover, the market size implied by an economic union imposes costs on some groups, even if there are overall gains. Those who move will often need retraining, and there are economic strains both on regions that gain population and on those that lose it. If an economic union is implemented some regions or industries will lose compared with the status quo or with some alternative grouping of regions. Thus, various forms of inter-regional fiscal transfers are called for in federal systems, both to ease such adjustments and to help reduce inequalities in regional income. Such problems are of course not peculiar to federal states.

The concept of a national market implies the capacity to deal consistently with foreign governments - for example, to make trade concessions that are enforceable across the country in return for trade concessions by other countries. It also has internal implications. A province with a much tougher policy on foreign direct investment than that

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and group interests, whether by persuasion, financial inducement, or coercion. See Safarian, Canadian Federalism, Part I, and Roger Dehem, On the Meaning of 'Economic Association', C.D. Howe Research Institute, 1978, especially Part 4.

of other provinces could be undercut by foreign-owned firms that enter other provinces and make shipments from there, forcing it either to surrender its policy or to begin monitoring interprovincial trade and investment.<sup>15</sup>

It is not hard to discover why provincial governments, often with federal support, have fragmented the market as their powers have grown.<sup>16</sup> Provincial governments, when dealing with other governments, federal or provincial, must represent provincial interests. To do otherwise is to court a diminution in local effectiveness and power and perhaps even electoral defeat. On many issues their interests may be served by co-operative or national approaches, but the fact that most major policies will leave winners and losers by groups and by regions (with or without adequate compensation) compels provincial governments to look after their constituents. The federal government in turn reinforces these tendencies, sometimes in pursuit of other policy objectives but often in seeking regional votes or provincial allies in the continuing federal-provincial exchange.

→ The barriers to mobility discussed earlier serve a number of provincial purposes. One is the desire to internalize the benefits of economic growth at the provincial level; another is to ease adjustments in declining sectors, particularly as those adjustments fall on labour. Let us consider how successful such approaches are likely to be.

The theory of the gains from international trade is applicable here precisely because the barriers to trade and investment in Canada are beginning to resemble those on the international scene. Unable for constitutional reasons to make use of tariffs, quotas, and certain kinds of indirect taxes, the provinces have resorted to subsidies, regulation of industry, moral suasion, and public ownership located in the province, and other devices noted earlier. But have we not seen what such strategies have led to in Canada as a whole? It has been clearly shown that pro-

15 France has faced exactly this problem in the European Economic Community. See A.E. Safarian, 'Policy on multinational enterprises in developed countries,' Canadian Journal of Economics, May 1978, 646.

16 The rationale for discriminatory policies in terms of party organization and the market for votes is explored in Albert Breton, Discriminatory Government Policies. This whole issue is closely related to the analysis of motives for regulatory approaches (see footnote 30 below).

longed protection of the Canadian market has harmed the efficiency of industry, encouraged foreign ownership, and created an uneven distribution of gains and losses among regions and groups.<sup>17</sup> Do we wish to follow the same course in the smaller provincial markets? Why would results in a province be better than those at the national level? Such policies raise the costs of transacting business, and the consequent inefficiency affects Canada both internally and internationally. Ironically, the multiregional and multinational firm would adjust most easily to provincial protectionism, leaving the smaller and regional firms further behind and more vulnerable to absorption by the former.

From a provincial viewpoint such policies would work in the long run in those cases where a provincial market is large enough to support a firm of minimum efficient scale - interpreting efficiency in terms of dynamic comparative advantage over time. Otherwise a permanent subsidy will be needed in the form of taxes and regulations imposed on some to benefit others.<sup>18</sup> The scale will not come from other provincial markets since retaliation is inevitable, thus reducing further the likelihood of gain. The unco-ordinated game played at present is largely self-defeating. The provinces will tend to match one another (the poorer ones assisted by the federal government), thereby either reducing the amount of private investment stimulated per dollar of public subsidy or reducing one another's markets, or both. Often such a process redistributes income between groups, not always progressively, rather than stimulating economic growth or development. Nor can efficient scale come automatically from the external market, even in areas where Canada might have advantages. As the Tokyo Round under GATT is demonstrating, if the very non-tariff barriers we have been discussing are maintained, the concessions we want in the export market will not be secured.<sup>19</sup>

This argument is presented in terms of trade theory, but it can be advanced in other ways. A standard argument in support of the decent-

17 Among many others, see H.C. Eastman and S. Stykolt, The Tariff and Competition in Canada, 1967, and the main report and related studies for the Economic Council of Canada's Looking Outwards, 1975.

18 I exempt here, for example, the standard interventions to improve market forces or to account for externalities.

19 Three of the six major types of non-tariff barriers notified in this round (procurement policies, import protection by subsidies and the like, and health and safety standards) lie to some degree within provincial jurisdiction (Stegemann, Canadian Non-Tariff Barriers).

ralization of power in a federal system is based on the freedom to 'vote by foot,' to be able to move to get a better mix of tax, regulatory, and expenditure policies. If mere movement is involved the notion seems meaningless to me since what is critical is the right not just to move elsewhere but also to work there. In fact the argument can be turned to support uniformity of regulation in such matters as licensing and certification, or ease of transfer where uniformity is not desired. Recently the importance has been emphasized of minimizing organization costs, that is, communication between citizens and governments, mobility between jurisdictions, government administration, and co-ordination between governments.<sup>20</sup> Some of these categories strongly imply uniform policies in some areas and federal control in others, at least for the needs of a national market.

Against these views it may be argued that not enough research has been done to show that the trends are important, that the losses from impediments to trade are significant. It is true that quantification on inter-regional mobility is not what it should be: sometimes I wish the Economic Council of Canada had written a study entitled Looking Inward. Current studies measure losses from a customs union viewpoint under static assumptions; dynamic gains and the mobility of labour and capital are not considered, let alone potential losses from, say, the inability to negotiate concessions in foreign markets.<sup>21</sup> The debate on the merits and demerits of the multinational corporation as a medium for the transfer of techniques is less advanced at the interprovincial level, although the arguments being made by some provinces vis-à-vis the larger metropolitan centres bear a family resemblance to that dispute.

Traditional international trade theory, of course, assumed labour to be immobile between countries, and the gains were seen in this context. Further gains are possible once mobility of labour and capital is assumed:

20 Albert Breton and Anthony Scott, The Economic Constitution of Federal States, University of Toronto Press, 1978.

21 See, for example, Clarence Barber, 'The customs union issue,' in Options, University of Toronto Press, 1977, and Tim Hazeldine, 'The costs and benefits of the Canadian customs union,' paper presented to the workshop on the Political Economy of Confederation, organized by the Economic Council of Canada and the Institute of Intergovernmental Relations, Queen's University, November 1978.

unemployed labour may find employment, underemployed labour may become more fully or more appropriately employed, a higher return to labour may result, and so on. The arguments against this position are the social costs involved, both for the communities that lose the labour and for those that gain it. Furthermore, it is claimed that labour is often not sufficiently mobile between provinces to enable this process of adjustment to reduce regional inequalities over time. In the shorter run, of course, the fact that national monetary policy accentuates the regional unevenness of the Canadian unemployment rate reinforces this argument. In such circumstances, the plea for policies on industrial location, as distinct from labour mobility, take on greater force as solutions for problems of persistent labour surplus. A great deal of research has been done on the net gains or losses to the communities sending or receiving labour or to individual migrants, on the appropriate instruments, and on the political costs to governments.<sup>22</sup>

Granting that an emphasis on mobility of labour alone is not enough, particularly for short periods, three critical questions remain. First, outright impediments to those who do wish to move between provinces should still be attacked directly. Secondly, one cannot have it both ways: if one argues that most labour is relatively immobile in some provinces, at least barring continued heavy economic pressure, one cannot also advocate policies that reduce trade and capital flows between the provinces, and perhaps internationally as well. If adjustment does not occur through population movement, and if a single currency area exists, then efficient trade and capital flows become more important, not less, provided the goal is not autarky. Thirdly, there may still be a need for government intervention to spur efficient regional development. The issue is not one of

22 See, for example, T.J. Courchene, 'Interprovincial migration and economic adjustment,' and John Vanderkamp, 'The effect of out-migration on regional employment,' both in Canadian Journal of Economics, November 1970. See also Isabel B. Anderson, Internal Migration in Canada, 1921-1961, Economic Council of Canada, 1966. The substantial outflow of population from Quebec to the United States in the late nineteenth century is referred to in M. Lamontagne, 'The American economic impact on Quebec,' in Hugh G.J. Aitken et al., The American Economic Impact on Canada, Duke University Press, 1959. Breton, Discriminatory Government Policies, has explored the political organization costs.

market versus government but whether economic development is to serve national or international markets or the provincial markets. I believe the chances for efficient development over time are often far greater with wider markets than with only a provincial one. Long-term resistance to adjustment policies, including labour mobility where relevant, creates dependence on fiscal transfer payments that may perpetuate inequality between the provinces.<sup>23</sup>

#### STRENGTHENING THE NATIONAL MARKET

The question of policy designed to strengthen the national market is obviously complex, and my brief comments are necessarily tentative. Moreover, important non-economic issues are at stake in the present constitutional debate, and criteria other than those used here will affect the outcome.<sup>24</sup> Some concepts of community, for example, emphasize the interests and needs, only partly economic, of the country as a whole; others emphasize those of the provinces; and still others those of 'les deux nations.' Another constitutional perspective emphasizes the nature of democracy, such as the rights of individual citizens vis-à-vis governments, or the respective rights of minorities and majorities. None of these approaches is any more capable than that of economics of settling the question of the most suitable division of powers. The community approach obviously pits levels of government (and on some issues the two language groups) against each other, and minority and majority rights frequently conflict. Federal systems are often in uneasy balance, and constitution-making is at best an art.

I have emphasized the efficient production and consumption of goods and services and the related issue of mobility. The importance of a functional approach to the division of economic powers, which asks where powers should be placed to serve individual and community needs most effectively, is that constitutional reform has much less chance of success if

23 See Thomas J. Courchene, 'Economics and federalism,' Transactions of the Royal Society, 1978, Fourth Series, XVI, 71-87.

24 For a discussion of non-economic criteria, see Richard Simeon, 'Criteria for choice,' paper presented to the Workshop on the Political Economy of Confederation, Kingston, 8-10 November 1978 (mimeo).

such questions are not asked. One important complication, as suggested by court decisions on the constitution, is that it is difficult at times to distinguish deliberate and significant impediments to mobility from other more defensible objectives.

With these qualifications, let me suggest ways to strengthen the national market. First, much more can be done within the present framework of the constitution to ensure uniformity of law or the existence of transfer rights where systems are different. When certification and licensing requirements differ, for example, simply asking what degree of quality control or satisfaction of local circumstances is reasonable can often significantly improve the situation. The work of l'Office des professions du Québec and that of the Professional Organizations Committee and the Committee on the Healing Arts in Ontario are cases in point.<sup>25</sup> The past twenty years have seen the development and extension of the Inter-provincial Seal Program for skilled trades. In a number of professions common examinations have been developed or improved interprovincial transfer arrangements adopted. No doubt much more can be done for mobility, whether of persons, goods, or capital. It has been suggested, for example, that the Canadian Conference of Commissioners on the Uniformity of Legislation has not been as effective as its counterparts in some other federal states.<sup>26</sup> Further progress with the portability of private pensions and access to public services might be possible inter-provincially, with or without federal involvement. At the federal level it is notable that no general trade legislation spells out the federal trade powers and reduces the confusion about them.

Secondly, there is some scope for judicial action as well, testing legislation in the courts to outline federal and provincial powers more clearly. I am less optimistic than some writers about how far such an approach can go in the present state of federal-provincial relations. The process of intergovernmental accommodation would be strained, for example,

25 It is of interest to note some similar efforts in the European community to encourage labour mobility. See Francine Charbonneau-Chevallard et al., Quelques expériences étrangères d'intégration économique, 208-17 (Gouvernement du Québec, 1978).

26 Trebilcock et al., 'Restrictions on the interprovincial mobility of resources,' 119

if the federal government were to become highly active in court. Besides, some provinces have been notoriously poor losers in such cases, often threatening in advance to nationalize the industries involved, to separate from Canada, and so on. Parallels with other federations can be misleading in this respect. In the United States the large number of states and the division of powers at the centre between the three branches of government allow the Supreme Court a large role. With the parliamentary system and the relatively small number of provinces it is unlikely that the Canadian Supreme Court could do as much, even with more provincial input into appointments. On the other hand negotiation and accommodation have a much greater political role in the Canadian system. Canada is like an industry with one large firm that often acts as a price leader, several other large firms, and a number of smaller but influential ones, a situation that in economic theory gives changing alliances and unstable results.

Court interpretations in any case depend to some degree on the written constitution. The important question is what happens when federal and provincial governments, or combinations of them, disagree on how to reconcile important interests, or where the rights of individuals are seriously restricted by interprovincial barriers. A third possibility, therefore, is to review the assignment of powers made by the constitution. Proposals to limit barriers to interprovincial mobility of goods, labour, and capital were made by the Task Force on Canadian Unity and by the Constitutional Committee of the Quebec Liberal Party; others were presented in the Constitutional Amendment Bill of the Government of Canada and in the prime minister's 'second list' of items to be considered in the continuing constitutional review.<sup>27</sup> The Canadian constitution, both the BNA Acts and the court interpretations of them, is clearly incomplete here. Section 121 prohibits a duty on interprovincial trade but says nothing about non-duty

27 Task Force on Canadian Unity, A Future Together, Ottawa, 1979, Recommendations 20-23, 123-4; Constitutional Committee, Quebec Liberal Party, A New Canadian Federation, Quebec, January 1980; Government of Canada, The Constitutional Amendment Bill, June 1978, especially p. 6, section 8; and press release from the Office of the Prime Minister of Canada, 12 February 1979. It is worth adding that the concessions of federal powers discussed but not agreed to at the federal-provincial conference of February 1979, if considered separately from the 'second list,' might well have further fragmented the national market.

barriers and even leaves the way open for a duty on the interprovincial movement of imported goods. And it applies only to commodities, being silent on services and capital. The federal power of trade and commerce is not particularly strong. For decades court interpretations tended to narrow the federal power and to support the specified provincial powers that conflicted with it, notably property and civil rights, particularly if the federal government appeared to have a regulatory intent in mind.

The constitution may need to be rewritten to reflect adequately the fact that the federal state is based on a common market and an economic union.<sup>28</sup> For example, Section 121, prohibiting interprovincial barriers to trade, could be extended to include some types of non-tariff barriers to trade and to apply explicitly to inputs to production. Discrimination against workers by province of origin could be prevented by specific reference, perhaps by having the trade power of Section 91(2) apply to labour services or by extending competition policy explicitly to this area; in that case other guarantees could be written to extend trade and capital mobility. Nor are the common market institutions of banking and finance and of transport clearly spelled out. Moreover, if federal spending powers are to be limited to reduce intervention in assigned areas of the constitution, provincial powers should be limited too. It would be ludicrous to prevent the federal government from using its spending powers to distort provincial priorities and to intervene in areas of provincial responsibility, while permitting the provinces to use their spending powers to fragment the Canadian market, reduce labour mobility, and frustrate foreign economic policy. Both levels of government have violated the spirit as well as the letter of the constitution in this respect, and, as Roger Dehem notes, they are now competitive rather than complementary in function.

I have not discussed tax policies, which are complex enough to deserve separate study, but similar principles apply there. Indirect taxes were assigned exclusively to the federal government because some kinds could regulate interprovincial and international trade. If revisions are to be made in them to give provinces more effective jurisdiction over natural resources, great care must be taken not to erode the common-market/

28 For a fuller discussion see Safarian, Canadian Federalism, Part V.

economic-union bases of confederation.

Any of these approaches raises difficult constitutional questions, whether about specific clauses or about the overall balance of federal and provincial powers. In addition, these approaches raise two further basic questions.<sup>29</sup> Some of these proposals strengthen federal powers, a position unpalatable to some for many reasons. Moreover, there is the question of how much power any government should have. Politicians and bureaucrats, both federal and provincial, may not have the incentives to assure a socially optimal mix of uniformity and diversity in policies.<sup>30</sup> The federal government, for example, has not always been careful to prevent the fragmentation of the national market. It is important, from this viewpoint, to protect the economic rights of Canadians, individually and in voluntary associations, against the encroachment of all levels of government by forcing governments to face up to the costs imposed by their barriers to mobility. This question becomes particularly important in any substantially decentralized federation, since in such a situation the likelihood of increased barriers to mobility is much greater. For all these reasons, one can argue for entrenching basic economic rights in the constitution. One objection to this position is that, if taken far enough, it could prevent either level of government from correcting for market failure where that occurs.

Finally, should we not be trying harder to harmonize areas of federal-provincial overlap? I refer to the plethora of committees in this country, which in practice if not in principle may be a Canadian contribution to the art of federalism. There is much scope for overlap in modern social systems, and it is obviously desirable to improve co-operative procedures in such areas. Yet I have strong reservations about the trend to committees, which appears to be the dominant one in Canada. The system of federal-provincial committees now amounts to a third level of

29 I am indebted to M.J. Trebilcock for emphasizing this approach in comments on an earlier draft.

30 For example, see Breton and Scott, The Economic Constitution of Federal States, 61 and Chap. 8; D.G. Hartle, A Theory of the Expenditure Budgetary Process, University of Toronto Press for the Ontario Economic Council, 1976; M.J. Trebilcock, L. Waverman, and J.R.S. Prichard, 'Markets for regulation,' in Ontario Economic Council, Government Regulation, 1978.

government, one fundamentally less accountable than other levels if only because most of its proceedings are far from public view. In a parliamentary system any agreement reached in such committees is difficult either to examine or to undo in legislatures. Moreover, the process greatly increases the costs of transacting government business, leading to increased uncertainty and bureaucratization. The process of negotiation dominates the actual questions involved. The process itself tends to become the product. And the intermingling of jurisdictions that results seems to exacerbate the tensions normal to any federal system. For these reasons I believe we should look more closely at a clearer separation of powers, and then make the important remaining areas of policy co-operation more transparent and accountable. Where substantial overlap is unavoidable, a clearer statement of which government is paramount would also help.

I have considered several ways of lowering the barriers that weaken a national market. The best approach to take depends on the issue. It also depends on a variety of judgments: what importance does one place on the national market objectives; how large are the costs of transacting private and public business under various decentralized models? My own opinion is that for efficient production, consumption, and regulation there is a stronger case for uniformity of laws or for co-ordination of policy nationally than many participants in the debate are now prepared to admit.





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